

## **CHAPTER 5000    HEALTH AND SAFETY**



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## **5100 CRITICAL INCIDENT MANAGEMENT**

- A. The Children's Administration (CA) complies with DSHS Administrative Policies 8.02 and 9.01 for reporting and managing critical incidents as defined in Administrative Policy 9.01. See also the *CA Practices and Procedures Guide*, chapter 2000, section 2553.
- B. This procedure outlines requirements for management and reporting of critical incidents in licensed facilities, or homes subject to licensing, homes certified for adoption, and incidents involving CA staff and facilities.

## **5110 Procedures**

### **5111 Reporting Methodology**

- A. All reports of critical events alleged to have occurred in licensed facilities, or facilities subject to licensing, and homes certified for adoption shall be generated through the Case and Management Information System (CAMIS) Facility Complaint Module.
- B. Incidents involving staff, volunteers, and other types of events are reported using the *Administrative Report of Incidents*, DSHS 20-192.

### **5112 Licensing Complaints**

- A. Incidents which clearly reflect concerns about licensing (e.g., staffing ratios, cleanliness, menus) will be assigned to the licenser. If, during the course of the investigation, the licenser suspects child abuse/neglect, a new referral will be initiated and a joint Division of Licensed Resources (DLR) facility investigation/licensing investigation will be conducted.
- B. The results of investigations, including documentation of follow-up visits, compliance agreements, etc., will be recorded in the licensing file; i.e., CAMIS Facility Complaint Module.

### **5113 Allegations of Child Abuse/Neglect in Facilities**

- A. All complaints alleging child abuse/neglect in facilities shall be screened by CA intake. Complaints that do not meet sufficiency for CPS investigation shall be reviewed by the CA intake supervisor and referred to the licensing supervisor for assignment to the licenser for follow-up investigation and resolution. DLR facility investigation staff shall investigate all referrals meeting sufficiency for CPS investigation using the high standard of investigation without regard to the risk tag assigned to the referral. Investigative staff will route a copy of the referral to the licenser.
- B. DLR CPS investigative and licensing staff will coordinate investigative activity with investigative staff assuming the lead responsibility.

- C. As DLR investigative staff initiates the investigation, the investigative supervisor will report serious allegations to the Regional Manager and the Facility Investigations Section Manager, who may decide to forward them further.
- D. Progress reports will be verbal and in the CAMIS Facility Complaint Module from the investigative staff through the immediate supervisor to the Regional Manager and the Facility Investigations Section Manager, who reports to the DLR Director and Assistant Secretary/designee when appropriate.
- E. If the investigator determines that CA/N occurred and risk of imminent harm exists relative to other children in the facility, an Area Manager is to be contacted immediately relative to removal of the children.
- F. Investigative supervisors will consult with Regional Managers, the Facility Investigations Section Manager, Area Managers, and regional staff when appropriate, relative to suspension/revocation of licenses and stop placement orders. Assigned Assistant Attorneys General (AAG) will be consulted prior to final determinations.

#### **5114 Serious Child Injury or Fatality**

- A. CA Intake will distribute information on serious child injury or fatality to the social worker or supervisor, the assigned licenser, and the appropriate Area Manager or, in that person's absence, the Regional Administrator, as well as the DLR Regional Manager when applicable.
- B. In the case of an after-hours incident, the on-call supervisor is to be notified.
- C. A report is to be generated through the Facility Complaint Module to be submitted to the Regional Administrator and the DLR Regional Manager, as applicable, the first working day following the incident.
- D. DLR CPS investigative staff will coordinate all aspects of the investigation with the complete cooperation of licensing staff. Licensers will assist in the investigation and compilation of chronology as appropriate.
- E. An incident chronology in the form of a final report with recommendations is due within two weeks of completion of the investigation, with copies to the DLR Regional Manager, the DLR Facility Investigations Section Manager, the Area Manager, and the Regional Administrator.
- F. The Regional Administrator/designee and the DLR Regional Manager will report all serious and emergent incidents as defined in Administrative Policies 8.02 and 9.01 in accordance with those policies, with a copy of the report provided to the Director, Division of Program and Policy Development.

#### **5120 Provider Reports**

##### **5121 Purpose**

- A. Licensed or certified out-of-home care providers are required by WAC 388-148 and by section 5300 to report serious incidents to the department.

**5122 Elements of Protocol**

The section has been rescinded. When staff identify licensing violations they must make a report to Intake. The list of violations can be found in WAC 388-148-0120.

**5200 CHILD DEATH REVIEW****5210 Policy**

Chapter 204, Laws of 1995 required the department, in conjunction with the Department of Health (DOH), local jurisdictions, coroners, medical examiners, and other appropriate entities, to develop a consistent process for review of unexpected deaths of minors in the state of Washington who are in the care of or receiving services described in chapter 74.13 RCW from Children's Administration (CA).

**5220 Deaths to be Reviewed****5221 Anticipated**

- A. The Regional Administrator, in coordination with the appropriate DLR Regional Manager, as applicable, must review all deaths that occur in CA licensed or certified homes or facilities.
- B. The Regional Administrator must complete an internal fact-finding review of all expected or anticipated deaths of children whose families have received services from CA during the 12 months prior to the child's death or when there has been a CPS referral, whether accepted or not, within the previous 12 months.
- C. The team developed must complete community child death review only after the Regional Administrator requests a review.

**5222 Unanticipated**

- A. The Regional Administrator must complete an internal fact-finding review of all unanticipated deaths of children whose families have received services from CA during the 12 months prior to the child's death.
- B. All unexpected deaths involving minors in the care of or receiving child welfare services from DCFS or child care services from DLR shall receive a community child death review. This includes not only deaths that may be a result of abuse or neglect, homicide or suicide, but also accidental trauma.
- C. Sudden Infant Death Syndrome (SIDS) is a medical diagnosis, determined by autopsy and death scene investigation. SIDS deaths shall receive a community child death review.
- D. The community child death review team must review deaths reported to CPS or CA Intake as being a possible result of child abuse or neglect.

**5223 Other DSHS Divisions**

For child deaths in facilities owned, licensed, or certified by other divisions of DSHS, CA, by arrangement with that division, may participate with and assist the other division in the review of the death.

**5224 Summary Table**

A. The following table summarizes death review activity:

<b>CA CHILD DEATH REVIEW</b>	
<b>Mandatory Fact-Finding by the Regional Administrator</b>	
<ul style="list-style-type: none"> <li>▪ All unexpected deaths of minors receiving services from DCFS within the past year and unexpected deaths of children occurring in DLR-licensed facilities</li> <li>▪ All anticipated deaths occurring in CA licensed or certified homes and facilities</li> <li>▪ All anticipated deaths of children whose families received services from CA during the previous 12 months</li> </ul>	
<b>Mandatory Community Child Death Review</b>	
<ul style="list-style-type: none"> <li>▪ All unexpected deaths of minors receiving services from DCFS within the past year and unexpected deaths of children occurring in DLR-licensed facilities</li> </ul>	
<b>Optional Community Child Death Review</b>	
<ul style="list-style-type: none"> <li>▪ Requests for review of child deaths in facilities owned, licensed, or certified by other divisions of DSHS</li> <li>▪ Anticipated deaths occurring in CA licensed or certified homes and facilities or in families that received services from CA within the previous 12 months</li> </ul>	

**5230 Procedures**

- A. Child death review requires at least two steps.
1. The first step is a **fact-finding** by the Regional Administrator. During this phase, the Regional Administrator gathers information about the death, including an examination of the case file and the status of the case. This activity may include community consultation and participation.
  2. The second step is **community child death review**. If the death involves a felony, law enforcement will conduct an investigation as a third step.

**5231 Fact-Finding**

- A. Within 14 calendar days of notification of a child death, the Regional Administrator must designate staff to examine the circumstances of the child's death, with the review called a fact-finding. Community consultation and participation may occur as part of this activity. Within 45 calendar days, assigned staff will provide the Regional Administrator with a summary of the case, a chronology, and facts, consistent with criteria in section 5100, **CRITICAL INCIDENT MANAGEMENT**.



- B. The fact-finding review should address practice issues as well as internal policy issues. Specific personnel issues should be addressed separately. Practice or policy issues requiring general corrective action should be addressed in an accompanying action/corrective action plan. When that activity is completed, a case summary and chronology will be provided to the community review team.
- C. For the fact-finding, the Regional Administrator may arrange for interview with any persons involved with the family or the deceased child, including:
  - 1. Service providers;
  - 2. Foster parents;
  - 3. Therapists or staff from community agencies;
  - 4. Parents or relatives of the child;
  - 5. The assigned social worker, supervisor, Area Manager;
  - 6. Any other person or persons considered to be relevant.
- D. Fact-finding reports in the CA-prescribed format with action/corrective action plans must be sent electronically to the program manager for Child Fatality Review and to the Special Assistant to the Assistant Secretary in CA headquarters. Reports will be stored in an electronic filing system.

## **5232 Community Child Death Review**

- A. Community Child Death Review is a joint effort of CA and a multi-agency, multi-disciplinary team of professionals with two purposes:
  - 1. To focus on both agency and community responses to the death and possible preventive steps to be taken.
  - 2. To consider broader data, such as demographic information and systemic, community responses to the death.
- B. When community child death review occurs, the information is referred to the region or community team responsible for review of CA child deaths. If such a team does not exist in the DCFS region or community, the Regional Administrator takes steps to establish such a team in conjunction with the local public health office and/or the technical assistance subcommittee of the State Child Death Prevention and Review Team. An *ad hoc* team may be used in the event a DOH/DSHS team cannot be assembled in a timely manner.
- C. The Regional Administrator is responsible for tracking the progress and completion of child death reviews. Within 180 calendar days of the report of the death, the community child death review is to be completed. The Regional Administrator will inform the Assistant Secretary of any exceptions granted to this time frame.

**5232 Community Child Death Review Team Membership**

- A. The team represents the community. CA is represented on the team as a full member, a resource, or as staff. The Regional Administrator will assure that members have no conflict of interest with respect to the matters being reviewed. The representatives will not be in the lines of authority relative to the case being reviewed.
- B. Members in sufficient numbers and diversity to ensure a full, competent assessment of the circumstances of the child's death will be included. Membership may include, but is not necessarily limited to, the following professional representatives.
  - 1. Mental health;
  - 2. Medical provider (pediatrics, obstetrics, or family practice);
  - 3. Law Enforcement;
  - 4. Child Protective Services;
  - 5. Prosecuting Attorney;
  - 6. Forensic pathology;
  - 7. Public Health;
  - 8. Social services;
  - 9. The Military;
  - 10. Chemical dependency specialists;
  - 11. Medical Examiner/Coroner;
  - 12. Tribes;
  - 13. Schools;
  - 14. Case or issue-specific professionals on an *ad hoc* basis.

**5234 Staff Support**

Each Regional Administrator will reach agreement with the team chair on the provision of staff support, information, documents, and records as the team deems necessary to complete its review of each child death.

**5235 Confidentiality**

- A. All review team members must sign confidentiality statements before reviewing CA records or documents.

- B. CA, not the community child death review teams, must release or make public findings or recommendations. Release of information is subject to laws regarding public disclosure and confidentiality. By statute, the deliberations of the DOH/DSHS fatality review teams are not disclosable. Aggregate information without identifying data, including team recommendations, will be disclosed to the public in the annual report.

## **5240 Information to be Reviewed - Suggested Guidelines for Both Fact-Finding and Community Review**

### **5241 Children's Administration-Specific Issues**

The purpose of reviewing these issues is to focus on practice-related issues. It identifies needed areas of agency and child protection system improvement and reviews case plans. The team may consider:

- A. Were policies and procedures properly followed in any previous and current CPS investigation?
- B. History of CA involvement with client and family.
- C. A review of risk factors as identified on referrals and documented on summary assessments.
- D. The social worker's assessment of the family and events immediately leading up to the incident.
- E. Were case plans appropriate? Were services offered and provided? What was the family's level of participation in the case plan?
- F. What was the juvenile court's role in this case?
- G. What was the degree of follow-through and cooperation by the care provider in addressing corrective actions required as a result of earlier issues? Was CA staff follow-through on required corrective action adequate?
- H. What commendable or outstanding work was done by workers and/or supervisors?

### **5242 Systemic and Community Issues**

Since children and families are often served by several agencies or systems in a community, it is essential to consider how the family was served by the service network. The team may consider:

- A. Did agencies involved with the family possess adequate information regarding the child or family in order to plan for protection of the child? If not, why not? Was important information available which, was not gathered or used?
- B. How did agencies interpret the available information? To what extent were the case plans based on accurate assessments?

- C. What factors were most significant in increasing risk to the child and the child's siblings?
- D. Did agency policies and procedures create obstacles to protecting the child? Are there policies that would improve the agency's or community's ability to protect the child? Are there policies that would improve the agency's or community's protective service system?
- E. Are there gaps in community resources which inhibited efforts to protect the child?
- F. Were training needs identified and appropriate training provided?
- G. Were the intervention strategies used consistent with accepted practice standards?
- H. Are there changes in statute, policy, procedure, interagency collaboration, resource deployment or availability that would assist agencies in preventing deaths in similar situations?
- I. Was the response following notification of the death appropriate for providing support to staff, foster parents, parents, and/or others?
- J. The Regional Administrator, with participation from other CA divisions, may also formulate case-specific questions to be submitted to the team for review.

## **5250 Findings and Recommendations**

Community Review findings and recommendations focus on identifying what can be learned to prevent future child deaths. The child death review team provides a written report to the Regional Administrator upon completion of the review.

- A. Reviews are to identify system shortcomings and include review team recommended strategies and implementation steps.
- B. Review findings are used to build community alliances, expertise, and commitments for program improvements, policy and procedural changes, and improved multi-disciplinary collaboration.
- C. Findings can also identify program and system strengths, communication issues, and specific information regarding child mortality.
- D. Findings and recommendations address the total community child protection system and are not limited to CA or DSHS programs.
- E. Findings may address individual employee actions and decisions in the specific case under review.
- F. CA headquarters must file reports with DOH in Olympia, using a CA-prescribed format. DOH will forward an aggregate report of findings and recommendations on DSHS cases collected by region to the CA headquarters program manager for Child Fatality Review on a quarterly basis.

- G. Upon receipt of the DOH aggregate report, the program manager will send regional recommendations to the appropriate Regional Administrators for action.

## **5260 Regional Administrator Submittals**

The Regional Administrator will submit the following to the Assistant Secretary, with a copy to the Director, Division of Program and Policy Development and the program manager for Child Fatality Review:

- A. Within 30 calendar days of receipt of the child death review team's findings and recommendation, a response to the team detailing plans for implementation and/or reasons for not implementing the recommendation(s).
- B. An action or corrective action plan, if applicable, as well as quarterly progress reports as part of the regular regional quarterly reporting to the Assistant Secretary, with copies to the program manager for Child Fatality Review.

## **5270 Children's Administration Responsibilities**

The Director, Division of Program and Policy Development, to fulfill CA responsibilities, completes the following steps:

- A. Present community review recommendations that potentially affect statewide policy or procedure to the CA management team and appropriate DSHS program managers for review and action.
- B. Provide written response to each community child death review team, subsequent to the team's submission of findings and recommendations. Provide updates to the team on implementation of recommendations.
- C. Track and monitor actions to implement review team recommendations.
- D. Provide regular reports of child death reviews to DCFS and DLR staff to increase their understanding of risks to children.
- E. Prepare and distribute a report summarizing team findings.
- F. Provide an annual report to the Secretary.

## **5300 INVESTIGATING ABUSE AND NEGLECT IN STATE REGULATED CARE**

### **5310 Introduction**

- A. The Division of Licensed Resources (DLR) *Child Abuse and Neglect Section Practice Guide - Investigating Abuse and Neglect in State-Regulated Care* is a "how-to" guide to be used by the facility investigators in the course of investigations of alleged abuse and neglect in state-regulated care.
- B. The guide expands the Washington State Risk Assessment Model, developed for investigation of abuse in biological families, to include risk factors specific to state-regulated care. Within the "state-regulated" care sub-group, there are many differences between types of care. The guide helps investigators assess the

importance of those differences between types of care, while emphasizing the major similarities that need assessment in the course of an investigation.

### 5321 Purpose and Scope

- A. CA has a responsibility to ensure that high quality care is provided when a child is under state supervision or when a facility providing care is state-regulated. Minimum licensing requirements (MLR) define a higher standard of care than expected and legally allowed in a biological family unit. As a result, standards for accepting referrals for investigation of alleged abuse and neglect in state-regulated care encompass a wider range of allegations than those involving biological family units.
- B. Child Protective Service (CPS) investigations of reports of alleged abuse or neglect in licensed, certified, and state-operated care facilities (child day care, foster care, group care, hospitals, and institutional care) have five main goals:
  - 1. To ensure the immediate safety of alleged child victims;
  - 2. To investigate allegations and make determinations regarding the existence of child abuse and neglect (CA/N);
  - 3. To assess whether the child in question has been abused or neglected in a state-regulated setting in ways that have not been alleged;
  - 4. To identify risk factors within the facility which create a substantial risk of future harm to children; and
  - 5. To ensure consistency and equity toward providers in the investigation of abuse and neglect.
- C. Investigations of alleged abuse or neglect must include assessments of the presence or absence of patterns of CA/N and/or inadequate care as well as documenting specific incidents of child maltreatment.
- D. Investigations of alleged abuse or neglect in licensed care are distinct from investigations of compliance with MLR or certification standards. Nevertheless, when there is an investigation of alleged abuse or neglect in licensed care, the investigator must consider a history of compliance or non-compliance with MLRs or certification standards in his or her overall assessment.
- E. Investigations of alleged abuse or neglect are expected to result in findings related to specific allegations of CA/N. The findings also include the presence or absence of other abuse or neglect in the licensed setting and record the important risk and protective factors present. Findings must have a strong factual basis, be supported by appropriate documentation, and include recommendations regarding disposition of the case.
- F. See the DLR *Child Abuse and Neglect Section Practice Guide - Investigating Abuse and Neglect in State Regulated Care* for steps to follow for Intake, Investigation, Assessment, and Disposition of allegations of CA/N in state-regulated care.

## **5400 HEALTH AND SAFETY REVIEWS**

CA staff must use the CA protocol *Health and Safety Review Standards - Procedures for Group Care and Therapeutic Foster Health and Safety Reviews* as the guideline for conducting health and safety reviews of this types of facilities. In addition, staff must comply with the provisions of the *CA Practices and Procedures Guide*, chapter 4000, section 4421, Health and Safety of Children.

## **5500 BACKGROUND INQUIRIES**

### **5510 Authority**

- A. The department is required to safeguard the well-being of children, expectant mothers, and developmentally disabled persons receiving care away from their own homes, in licensed child caring agencies, and by contractors of the department by conducting background inquiries on those persons who would have contact with these vulnerable populations.
- B. The essential requirements for conducting such checks are found in chapter 43.43 RCW, RCW 74.15.030, WAC 388-06, and DSHS Administrative Policy 9.04. This section elaborates on those requirements.

**RCW 43.43.832; RCW 74.15.010; RCW 74.15.030**

### **5511 Definition**

A required background check must include:

- A. An investigation of CA records to determine if the person has a history of abuse or neglect of children; and
- B. Criminal history convictions, pending charges, or other releasable information maintained by law enforcement.

### **5512 Required Record Checks**

CA staff must not authorize unsupervised access to children until a satisfactory CA record check that meets CA standards to identify child abuse or neglect and a criminal history background check have been completed and documented in the following circumstances:

- A. When placing a child or making a recommendation about the suitability of a proposed or existing placement resource, including prospective placements approved by a licensed child placing agency (CPA);
- B. When authorizing staff, volunteers, or other persons to have unsupervised access to children as part of the licensing or re-licensing of a facility or home;
- C. When authorizing employees or volunteers of licensed facilities, who were not authorized during the license or re-license investigation, to have unsupervised access to children; and

- D. When approving CA contractors, their employees, subcontractors, or volunteers to have unsupervised access to children.
- E. Before authorizing payment for the care, supervision, or treatment of children up to age 18, including relative and in-home child day care providers. Such checks, with satisfactory results, must be completed annually.

### **5513 CA Records Check**

- A. To complete a background inquiry, CA staff must include a check of CAMIS records to determine if the individual has a history with the department that may make issuance of a license, employment, contract, or placement inappropriate. CA staff must complete the CAMIS check according to local office procedure.
- B. CA and licensed or certified child placing agency staff must not use unfounded reports of child abuse or neglect to deny employment or a license. CA staff must not disclose unfounded allegations of child abuse or neglect as defined in RCW 26.44.020 to a child placing agency, a private adoption agency, or any other provider licensed under chapter 74.15 RCW when that agency or provider is considering the alleged perpetrator of the unfounded child abuse or neglect as an employee, adoptive parent, or licensee.

**RCW 74.15.030 and 74.15.130**

- C. CA staff may consider founded reports of child abuse or neglect in determining whether a person is disqualified from being licensed to provide child care, employed by a licensed child care agency, or authorized by the department to care for children.

**RCW 26.44.100**

### **5514 Local Law Enforcement Check**

- A. Local law enforcement agencies may have information in their records which has not been reported to the Washington State Patrol (WSP). Designated local office staff must do background inquiries with local law enforcement agencies where agreements have been executed to provide for the exchange of such information. As part of the criminal background check, the worker must contact local law enforcement agencies, including tribal police if the person resides or has resided on an Indian reservation or is known to be or may be affiliated with a particular Tribe. Assigned staff must document such checks in the applicable service file.
- B. Law enforcement agencies generally expect CA staff to appear in person at their counter with appropriate identification, unless local agreements have been developed permitting other types of service.

### **5515 Criminal History Background Check**

Assigned CA staff must complete a criminal history background inquiry of records of the WSP, local law enforcement records, and/or the Federal Bureau of Investigation (FBI) as specified in Sections 5520 through 5580, below.



**5520 Circumstances for Inquiries**

Assigned CA staff must conduct criminal history background checks under the circumstances outlined below.

**5521 CPS Investigation and Unlicensed/Unexpected Placements**

Child Protective Services (CPS) has been designated as a limited purpose law enforcement agency by the WSP. As such, CPS has access to both conviction and non-conviction information about the perpetrator or alleged perpetrator of child abuse and unlicensed placement resources for placements contemplated under the authority of chapters 26.44 and 74.13 RCW.

- A. A CPS criminal history background check may be completed for use:
  - 1. In the investigation of an alleged perpetrator of abuse or neglect; or
  - 2. To verify the safety of an unlicensed/unexpected placement resource as part of a CPS investigation or to approve an unexpected placement with an unlicensed caretaker.
- B. Unlicensed/Unexpected Placements are those placements in which:
  - 3. The placement was not anticipated or planned as part of the case plan for the child;
  - 4. The caretaker is unlicensed and has been identified specifically for the child;
  - 5. It is in the best interest of the child to be placed immediately; and
  - 6. The safety of the caretaker will be initially assessed based on the results of a criminal history background check and the social worker's assessment of the persons suitability and competence. See the *CA Practices and Procedures Guide*, chapter 5000, section 5231.
- C. When making an unexpected placement of a child with an unlicensed caretaker, the social worker shall complete a criminal history background check prior to the placement of the child, except for relatives exempted in Section 5522.
- D. Only authorized CPS and CWS workers may obtain a CPS level background check for the purposes specified in paragraph A of this section, by marking "CPS" or "CWS" on the DSHS 14-239(X) and by following the procedures outlined in Section 5530, below.
- E. CPS investigation and CWS unlicensed/unexpected placement requests for criminal history background checks are authorized to receive conviction and non-conviction information under the authority of chapter 26.44 and 74.13 RCW.

**5522 Relative Placements**

- A. If a child is placed with a relative under RCW 13.34.060 or 13.34.130 and if such relative appears otherwise suitable, competent, and willing to provide care and

treatment, the placing social worker need not complete the criminal history background check before placement, but must complete it as soon as possible after placement.

**RCW 74.15.030**

- B. When a child(ren) has been "placed" with a relative by their parent(s) prior to CA involvement, the social worker shall not immediately remove the child(ren), but assesses the risk to the child(ren) and the ability of the relative caretaker(s) to protect the child(ren) from further abuse and neglect. The social worker shall immediately initiate a CA case record check and a criminal history background check.
- C. A relative placement check may be obtained by marking "CWS" on the DSHS 14-239(X) and by following the procedures outlined in Section 5530.

### **5523 Parental Placements**

- A. CA is not required to conduct either a criminal history background check or a CA case record check when a child resides outside the parental home pursuant to an agreement between the parent(s) and the child, and the "placement" decision was made by the parent(s).
- B. If CA becomes involved, is responsible for case planning, and the CA plan is for the child to continue residing in the home previously agreed to by the parent(s) and the child, the social worker shall initiate a criminal history background check and a CA case record check immediately.
- C. A CWS placement check may be obtained by marking "CWS" on the DSHS 14-239(X) and by following the procedures outlined in Section 5530.

### **5524 Adoption**

- A. All pre-placement adoption reports and CA authorized adoptive placements shall include a criminal history background check and a CA case record check which identifies convictions, pending charges, and disciplinary board final decisions of prospective adoptive parents.
- B. Adoptive placements made by voluntary agencies do not require either a criminal history background check or a CA case record check through CA, unless CA authorizes the placement. The voluntary agency applies directly to WSP for checks on such placements.
- C. Only authorized CA and CPA workers may obtain a background check for the purpose of adoption of a child by marking "Adoption" on the DSHS 14-239(X) and by following the procedures outlined in Section 5530. It is critical to indicate "Adoption" on adoption checks to assure proper handling.
- D. Adoptive placement requests for criminal history background checks are authorized to receive convictions and charges pending less than one year, under the authority of chapter 74.13 RCW.

**5525 Licensure or Re-licensure**

CA staff shall complete a criminal history background check prior to authorizing unsupervised access to children in licensed facilities and in accordance with the following:

- A. When facilities are licensed or re-licensed under the authority of chapter 74.15 RCW, assigned CA staff shall complete a criminal history background clearance on the following persons prior to the licensing or re-licensing action:
    - 1. Licensee, employees, volunteers, and other persons who may have unsupervised access with children in care; and
    - 2. All persons 16 years of age or older, excluding foster children placed by CA/DCFS or a licensed/certified CPA, and living with a licensed foster family or child day care provider.
  - B. All changes in persons not placed by CA and who may have unsupervised access to children in facilities licensed under chapter 74.15 RCW must be reported to the licenser immediately by the licensee. The licensed agency must forward the completed criminal history background check form to the CA licenser within seven calendar days for the following persons:
    - 1. New employee hires and volunteers accepted by a facility; and
    - 2. All persons 16 years of age or older, excluding foster children placed by CA/DCFS or a licensed/certified CPA, and living with a foster family or child day care provider.
- WAC 388-06-0110**
- 3. Such persons must not have unsupervised access to children in care until a background check with satisfactory results is completed and documented.
  - C. Upon receipt of the background check inquiry, authorized CA licensers must initiate a licensing background clearance by marking "Licensing" on the DSHS 14-239(X) form and by following the procedures outlined in Section 5530. License applicants and employees of licensed agencies who have resided in Washington state less than three years must complete FBI fingerprinting for a background check. In these cases licensers must follow the procedures outlined in Section 5540, below.
  - D. Licensing requests for criminal history background checks are authorized to receive convictions and charges pending less than one year under the authority of chapter 74.15 RCW.

**5526 Non-licensed Contractors, Employees, Volunteers, and Other Persons**

- A. Sections A-E have been rescinded and replaced by Policy 01-07 and WAC 388-06.
- B. The department requires background checks on individuals who will have unsupervised access to children or to individuals with a developmental disability in homes, facilities, or operations licensed, re-licensed, or contracted by the department to provide care as required under chapter 74.15 RCW. Effective

10/01/01, all Children's Administration divisions, sections, and units must comply with WAC 388-06 for background checks. Refer to WAC 388-06 for the following:

1. Who must have a background check;
2. What is covered in the background check;
3. What criminal convictions permanently disqualify an person;
4. What criminal convictions disqualify a person for a limited time;
5. What elements are reviewed if a person has a non-disqualifying conviction;
6. Who has access to background check information; and
7. Implementation of the 120-day provisional-hire pending receipt of FBI background checks results.

## **5527 CA Employees, Volunteers, Students, Interns, and Other Persons**

A. **Employees-** all Children's Administration (CA) positions are designated as covered positions and requires background clearances.

1. CA supervisors, as part of the hiring process for prospective employees in covered positions directly responsible for the care, supervision, or treatment of children, shall initiate criminal history background checks in accordance with DSHS Personnel Policy 532.
2. The supervisors, managers, and appointing authorities are to ensure that all persons under final consideration for any position with CA have had their background completely checked, which includes:
  - a Verification of past employment;
  - b Verification of education;
  - c Reference checks;
  - d If a state employee, a review of their official personnel file;
  - e CAMIS check for founded Child Abuse/Neglect (CA/N) and/or any licensing revocation, denial, or suspension; and as the final step
  - f A criminal history check through the Background Check Central Unit.
3. The only exception, for steps e and f, is when a current CA employee transfers within CA from one covered position to another covered position in the same class series. The assigned Human Resource Administrator, Manager, or Consultant from the Human Resources Division can provide guidance on how to accomplish all of these steps, with the exception of the CAMIS check.

B. CA Volunteers, Students, Interns, Other Persons

1. CA volunteers, students, interns, and other persons who may have unsupervised access to children and/or are authorized by CA or DSHS to provide care or supervision, including transportation, for children shall have a background check completed prior to having such access.

2. Authorized CA staff shall obtain a background check for the purpose of approving CA volunteers, students, and interns by submitting the Washington State Patrol form WSP-CRD-430 in accordance with the *Managers Manual*, Community Resource Development and Management, Volunteer Administration, Section 3.01.
  3. Requests for criminal history background checks on CA volunteers are authorized to receive convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation, but only if the victim was a vulnerable adult, adjudication of child abuse in a civil action, the issuance of a protection order against the respondent under chapter 74.24 RCW, and disciplinary board final decisions and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision.
- C. Any request to hire an employee with criminal history, founded CA/N or a licensing revocation, denial or suspension must be cleared with the Assistant Secretary **PRIOR** to offering employment, using the approval process described in the following chart:

1. Approval Process

<b>Criminal Convictions or CAMIS History</b>	<b>Request for Administrative Approval</b>	<b>Approval Process</b>
Disqualifying crimes: Permanent 388-06-0170  License revoked, suspended or denied	Deputy Assistant Secretary Division Directors Regional Administrators	Makes a request to the Assistant Secretary who will consult with the Secretary for a decision.
Disqualifying crimes: 5 years or less crimes 388-06-180  Founded CA/N 5 years or less	Deputy Assistant Secretary Division Directors Regional Administrators	Makes a request to the Assistant Secretary who will consult with the Secretary for a decision.
Crimes on the B list of more than 5 years  Founded CA/N of more than 5 years	Area Administrator or Office Chief	Deputy Assistant Secretary, Division Directors, Regional Administrators decides and notifies the Assistant Secretary immediately if approval has been granted.
Any crime not on A or B list (good character)	Area Administrator or Office Chief	Regional Administrator Division Directors

D. State Employee Pre-Employment Procedures are described in the following chart:

Responsibility	Action
Hiring Supervisor	<ol style="list-style-type: none"> <li>1 Schedules interviews with applicants</li> <li>2 Requests applicants submit background authorization form (DSHS 03-210) if applicant is: <ol style="list-style-type: none"> <li>a. Moving to different class series;</li> <li>b. Moving from different administration; or</li> <li>c. Moving from uncovered to covered position.</li> </ol> </li> </ol>
<p>Applicant</p> <ul style="list-style-type: none"> <li>• Includes all applicants being interviewed or considered</li> <li>• An applicant may be either open competitive <u>OR</u> a permanent state employee.</li> </ul>	<ol style="list-style-type: none"> <li>1 Completes form DSHS 03-210 and places in sealed envelope</li> <li>2 Submits sealed envelope to Hiring Supervisor</li> </ol>
Hiring Supervisor	<ol style="list-style-type: none"> <li>1 Interviews applicants</li> <li>2 Determines preferred candidate(s)</li> <li>3 Does NOT offer job to preferred candidate(s)</li> <li>4 Runs CAMIS check and other pre-employment reference checks/education verifications. If candidate passes verifications and reference/CAMIS check and is the final preferred candidate, proceed to next step. If candidate fails any of these, go to next preferred candidate.</li> <li>5 Opens the single final preferred candidate's sealed Background Check envelope</li> <li>6 Reviews form for completeness</li> <li>7 Faxes or mails form to Background Check Central Unit (FAX 360-902-0292 / PO Box 45025, Olympia, WA 98504-5025 / Mail Stop 45025)</li> <li>8 If form is faxed, retains original form until background check result is received</li> </ol>
Background Check Central Unit (BCCU)	<ol style="list-style-type: none"> <li>1 Reviews form for completeness: <ol style="list-style-type: none"> <li>a. If form is not complete, faxes or mails letter requesting information</li> <li>b. If form is complete, performs background check</li> </ol> </li> <li>2 Conducts background check and prepares letter providing results of background check. There are three possible results: <ol style="list-style-type: none"> <li>a. No Disqualifying Information Found;</li> <li>b. Record; or</li> <li>c. Disqualifying Information.</li> </ol> </li> <li>3 Faxes or mails letter to the Children's Administration Designee.</li> </ol>

Responsibility	Action
Hiring Supervisor	<ol style="list-style-type: none"> <li>1. Reviews background check result</li> <li>2. If applicant has <u>No Disqualifying Information Found</u>, offers job to applicant;</li> <li>3. If applicant has a <u>Record</u> that may allow unsupervised access and hiring supervisor <b>wants to offer</b> job to applicant:               <ol style="list-style-type: none"> <li>a. Make a request for administrative approval to hire through the Area Administrator or Office Chief, who will follow the approval process outlined in Rosie Oreskovich's May 8, 2002 memo.</li> <li>b. If approval is granted provides copy of letter and RAP sheet to applicant and offers job to applicant.</li> </ol> </li> <li>4. If applicant has a <u>Record</u> that may allow unsupervised access and hiring supervisor <b>does not want to offer</b> job to applicant <u>OR</u> if a <b>request for administrative approval to hire has been denied</b>:               <ol style="list-style-type: none"> <li>a. Informs applicant in writing of decision to not hire, providing copy of the BCCU letter and RAP sheet as an attachment; (Your assigned Office of Human Resource Operations Human Resource Manager has sample letters available – please note that the letters are different for open competitive versus permanent state employees)</li> <li>b. Opens next preferred candidate's sealed envelope</li> <li>c. Repeats process for next preferred candidate.</li> </ol> </li> <li>5. If applicant has a record that reads <u>Disqualifying Information</u>:               <ol style="list-style-type: none"> <li>a. Informs applicant in writing of decision to not hire, providing copy of the BCCU letter and RAP sheet as an attachment; (Your assigned Office of Human Resource Operations Human Resource Manager has sample letters available – please note that the letters are different for open competitive versus permanent state employees)</li> <li>b. Opens next preferred candidate's sealed envelope</li> <li>c. Repeats process for next preferred candidate.</li> </ol> </li> </ol>

1. CA supervisors, as part of the hiring process for prospective employees in covered positions directly responsible for the care, supervision, or treatment of children, shall initiate criminal history background checks in accordance with DSHS Personnel Policy 532.
2. Submissions shall **not** be made to the CA Background Clearance Unit, as it is not authorized to provide clearances in personnel matters.

**E. CA Volunteers, Students, Interns, Other Persons**

1. CA volunteers, students, interns, and other persons who may have unsupervised access to children and/or are authorized by CA or DSHS to provide care or supervision, including transportation, for children shall have a background check completed prior to having such access.
2. Authorized CA staff shall obtain a background check for the purpose of approving CA volunteers, students, and interns by submitting the Washington State Patrol form WSP-CRD-430 in accordance with the *Managers Manual*, Community Resource Development and Management, Volunteer Administration, Section 3.01.
3. Requests for criminal history background checks on CA volunteers are authorized to receive convictions of offenses against children or other persons, convictions for crimes relating to financial exploitation, but only if the victim was a vulnerable adult, adjudication of child abuse in a civil action, the issuance of a protection order against the respondent under chapter 74.24 RCW, and disciplinary board final decisions and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision.
4. Submissions shall **not** be made to the CA Background Clearance Unit, as it is not authorized to provide clearances in CA volunteer matters.

**5530 Name and Date of Birth Inquiry - Service Providers**

**5531 Service Providers To Be Checked**

- A. All criminal history background checks shall include a check of the **exact** name and date of birth match of WSP records, conducted through the CA Background Clearance Unit, except license applicants and employees of licensed agencies who have resided in Washington state less than three years.
- B. While there are alternative methods of obtaining a state level background check, CA staff are expressly prohibited from using such alternatives, because they do not provide the same level of conviction and non-conviction information as is available through the WSP records.

**5532 Regular Name and Date of Birth**

- A. Assigned CA staff initiates criminal history background checks by submitting a signed DSHS 14-239(X), *Criminal History & Background Inquiry* to the Background Clearance Unit.



1. The individual being checked must sign to authorize the check for licensing, contracts, and adoption.
  2. The CPS or CWS worker may authorize the CPS or CWS check if the request to sign the form would in any way compromise the CPS investigation or placement.
- B. CA staff shall verify the **exact** name and date of birth written on the form by the applicant by comparison to photo identification, preferably the applicant's Washington state driver's license.
1. Failure to submit an exact name and date of birth may result in the inability to link a record with an individual, resulting in a "no record" response on an individual with a record.
  2. The social worker or other locally designated staff shall make all persons from whom CA is requesting a Social Security number aware that CA will be doing a criminal history record check. Should the individual choose not to disclose the Social Security number, the designated staff shall submit the check using whatever other indicators are available (i.e., birth date, maiden name, alias, etc.).
- C. Within five working days of receipt of the completed DSHS 14-239(X) *Criminal History Background Check Request* form, the licenser, contracts coordinator, or other responsible CA staff, in accordance with regional procedures, shall submit the form with the original signature of the applicant to:

Children's Administration Background Clearance Unit  
PO. Box 5712 - MS 45712  
Olympia, WA 98504-5712

All requests for background inquiry information shall be made in writing and submitted by regular mail, except when meeting the criteria specified for an expedited background check in Section 5533.

- D. The licenser, contracts coordinator, or other responsible CA staff shall finalize actions, including written notification, to the licensee/applicant of the results of the check, within 10 working days of receipt of the completed form returned by the Background Clearance Unit.

### 5533 Expedited Inquiry Process

Criminal history background checks may be expedited when the results are needed in the field in three days or less, and failure to do so would jeopardize child safety. There are two levels of expedited inquiries and they will be processed according to the following procedures:

#### A. **Priority Background Check**

1. Priority Background Checks are those inquiries for which:

- a. The request could not be anticipated; and
  - b. The results are needed to complete a CPS investigation, an unlicensed/unexpected placement, or immediate service delivery; and
  - c. Failure to respond within three days would jeopardize child safety.
2. CA staff complete the follow steps to request Priority Background Checks:
    - a. Completion of the form, *Expedited Criminal History Background Check*, indicating "priority request";
    - b. Signature by the social worker or designee that the request meets all three standards of paragraph 1, above; and
    - c. Submission of the request to the CA Background Clearance Unit by fax at (360) 902-7931, or by mail under separate cover to M. S. 45712, Olympia, WA 98504.
  3. The Background Clearance Unit will process priority requests within two working days of receipt whenever possible and will mail results back to the requester in the following day's mail.

**B. Emergency Background Check**

1. Emergency Background Checks are those inquiries for which:
  - a. The request could not be anticipated; and
  - b. The results are needed immediately to complete a CPS investigation or an unlicensed/unexpected emergency placement; and
  - c. The imminent placement of a child depends on the results.
2. Social workers or designated staff request Emergency Background Checks by completing the following steps:
  - a. Completion of the form, *Expedited Criminal History Background Check*, indicating "emergency request";
  - b. Signature by a social worker, supervisor, or Area Manager that the request meets all three standards of paragraph 1, above; and
  - c. Faxed submission of the request to the Background Clearance Unit at (360) 902-7931.
3. Emergency requests which do not adhere to the procedures exactly will be processed as "priority requests."
4. The Background Clearance Unit will process emergency requests the day of receipt whenever possible and will mail results back to the requester in the

next available outgoing mail or will fax the results back to the requester upon verification that the return fax maintains appropriate confidentiality standards.

- C. When a background check is needed on an expedited basis and Background Clearance Unit staff are unavailable (e.g., after-hours or on weekends), the responsible social worker or other locally designated staff shall obtain criminal history information through a local law enforcement agency, in accordance with the local protocol between CA and law enforcement. This check will not include a fingerprint check.

#### **5534 Cost**

All costs for processing and providing criminal history information matched by name and date of birth are charged to the CA Background Clearance Unit when the procedures outlined in this section are followed.

#### **5540 Fingerprint-Based Background Inquiry Process**

##### **5541 Providers To Be Checked**

All criminal history background checks conducted on license applicants, employees, volunteers, and other persons with unsupervised access to children in care and who have resided in Washington state less than three years must include a fingerprint-based check of WSP and FBI records, conducted through the CA Background Clearance Unit.

- A. Fingerprint checks must be completed on individuals who have resided in the state of Washington for less than three years from the date of their application for license or employment in a licensed facility and who may have unsupervised access to children, expectant mothers, or individuals with a developmentally disability who are in the care of CA or in facilities licensed by CA, including, but not limited to, foster family homes, child day care homes and centers, and group homes.
  - 1. These fingerprint checks must be completed prior to the issuance of a license or approval for employment in a licensed facility, except that an individual may be hired on a conditional basis if the individual will not have unsupervised access to children, expectant mothers, or individuals with a developmental disability in care prior to completion of the check.
  - 2. CA staff complete fingerprint checks on the following groups of individuals who have resided in the state less than three years:
    - a. Applicants for agency license, licensees, their employees, and other persons who are present in the licensed facility, including volunteers.
    - b. Individuals employed by licensed facilities, but who reside in other states, completed at initial employment and at each subsequent re-licensing of the facility.
  - 3. If an FBI fingerprint check is required in addition to the state background check, an applicant for employment with an agency licensed or certified under chapter 74.15 RCW who has an acceptable state background check according to WAC 388-06-0530 may be hired by the licensee for 120 days on a

provisional basis, effective June 9, 2000, pending the outcome of the FBI check. The DLR regional manager may extend the provisional approval until receipt of the FBI check. If the FBI check disqualifies an applicant, the DLR licenser must notify the requesting licensee that the provisional approval to hire is withdrawn and the applicant may be terminated.

**RCW 43.43.832**

- B. The following individuals do not need to have a duplicate FBI check done under the circumstances outlined:
1. Individuals who have had an FBI check completed, as authorized under RCW 74.15.030, showing no criminal record since moving to the state of Washington, and such check is documented in the CA licensing file, need not have another check completed at application for license or employment in a licensed facility.
  2. Staff who move from one facility to another need not have the check redone if the completed check is documented in the licensing files. The individual shall complete the *Criminal History and Background Check*, DSHS 14-239(X), as with all other applicants.
  3. If CA or the Division of Developmental Disabilities (DDD) has completed and documented an FBI check and the individual changes facilities and documentation is needed by the other division, transfer of documentation will be completed by the centralized Background Clearance Units and forwarded to the regions. An applicant-signed request for transfer and licenser name must be submitted to the CA Background Clearance Unit prior to the transfer.

## **5542 FBI Fingerprint Cards**

- A. CA staff shall use **Children's Administration-unique** fingerprint cards for obtaining fingerprints and information from the FBI. The use of unauthorized cards will prevent the results from being returned by the FBI to the CA Background Clearance Unit and a second FBI submission will be required.
- B. Local office DLR staff will provide CPAs and group care agencies with CA-authorized FBI cards. The Background Clearance Unit has a supply of fingerprint cards and instructions. These supplies will be replenished on a request basis from the local offices and can be obtained by calling (360) 902-7927.

## **5543 Applicant Responsibility**

Persons for whom fingerprint checks are required shall take the steps outlined below to complete FBI fingerprint checks. If the instructions below are not followed **correctly**, the packet will be returned to the licenser, resulting in significant delay in the background clearance process. The applicant for license or employment shall:

- A. Obtain from the local licenser for **each person** requiring fingerprinting:
1. Two FBI fingerprint cards, as the FBI requires WSP and FBI fingerprint card submission, to process the fingerprint check in Washington state prior to processing the FBI national check;

2. CA FBI Fingerprint Instruction Sheet; and
  3. If applicable, a signed DSHS 05-220(X), *Children's Administration Fee Waiver*.
- B. Complete the top section of the card in **black ink**, according to the CA FBI Fingerprint Instructions. Cards must be completed exactly as indicated in the instructions or they cannot be processed.
  - C. Have fingerprinting completed by any **local** police or sheriff's department, **not** the WSP. The local law enforcement agency will charge a processing fee of approximately \$10 for the fingerprinting.
  - D. Submit proper payment to the WSP, as specified in Section 5545, and the completed cards according to the CA Fingerprint Instructions.

#### **5544 CA Licenser Responsibility**

##### **A. No Contact With WSP or FBI**

1. The FBI background check investigation will take up to four months to complete. **There is no accelerated, expedited check capability** for this process due to WSP and FBI procedures outside the control of CA.
2. CA staff, not employed directly by the CA Background Clearance Unit, are expressly **prohibited** from contacting the WSP or FBI for any purpose related to the completion of a background check, due to WSP and FBI procedures to which CA must adhere.
3. CA licensers or other CA staff may check the status of a request pending more than four months by contacting the CA Background Clearance Unit. CA licensers or other CA staff shall **not** in any way support applicants or agencies in having direct contact with the WSP or the FBI, for any purpose related to the completion of a background check including inquiring about the status of a request or attempting to expedite the fingerprint process.

##### **B. Use of Information**

1. When the FBI/police and criminal history check is completed, the licenser will receive written documentation on the status of the WSP fingerprint check and the FBI fingerprint check from the Background Clearance Unit. This determination shall be maintained in the licensing file.
2. Disclosure of the information provided to the licenser on the WSP and FBI check shall be made in conformance with Section 5570.

#### **5545 Payment**

- A. **Employer Payment**-Chapter 74.15 RCW specifies that the employer shall not pass on the cost of the fingerprint check to the employee, except in those cases when the results of the fingerprint-based background check results in the employee's disqualification from employment.

## B. Payment Method

1. The applicant/licensee shall make payment for a fingerprint-based background check payable to the **Washington State Patrol**, submitted in the form of:
  - a. Money order;
  - b. Commercial business account check;
  - c. Cashier's check; or
  - d. Signed CA Waiver of Payment as specified in Section 5545.C.3.
2. **No personal checks or cash will be accepted for payment.** Without a fee payment in the prescribed manner, the request for an FBI check will be rejected.

## C. Payment Amount

1. There is no refund process if the applicant decides not to continue the licensing process or if the applicant is denied a license due to information contained in the FBI/police and criminal history check.
2. All applicants who do not meet the definition of volunteer or qualify for a CA Waiver shall submit payment of \$55.
3. Unpaid agency volunteers who shall receive only cost reimbursement and no salary and licensed foster home applicants who do not qualify for a waiver of fees shall submit payment of \$49.
4. **Fingerprint Fee Waiver for Foster Family Home Licensees**
  - a. CA has determined that a "hardship," as required by the authorizing statute, exists for the foster family home provider when the provider agrees to accept for placement children in circumstance outlined below. DLR will waive fee requirement for foster family home applicants when one of the following conditions exist:
    - i. The home is being licensed to take a child(ren) in the care and custody of CA;
    - ii. CA is or will be making payment for care of a child(ren) in the home;
    - iii. The home is a relative being approved to take a child(ren) in the care or custody of CA; or
    - iv. The home is a relative being approved to care for a child(ren) for whom CA is or will be making payment.

- b. The approximate \$10 fee for fingerprinting is paid to the local law enforcement agency performing the service and cannot be waived.
- c. The licenser must approve the waiver using DSHS 05-220(X), *Children's Administration Fee Waiver*, and document it in the licensing record.
  - i. The completed form must accompany any fingerprint cards for which a waiver is being provided.
  - ii. Additional forms may be ordered from the Forms Warehouse.
  - iii. The waiver must be signed by the OFCL Regional Manager or the CA Regional Business Manager.
  - iv. Foster family homes certified by a CPA and licensed by DLR may have the fee waived only when the home meets the criteria specified in this section and the fingerprint submission is accompanied by a waiver form signed by the OFCL Regional Manager or CA Regional Business Manager.

#### 5. Other Waivers

RCW 74.15.030 permits waiver of fees only for payment for foster family homes.

### 5550 Background Check Documentation and Record Retention

- A. Designated CA local office staff will keep sufficient information to show that appropriate required background inquiries have been completed where required. Licensers must maintain entries in appropriate records indicating who ultimately received the information and how it was disseminated.
- B. CA local offices retain returned inquiry forms for the duration required of all licensing file records. Following revocation of a license, the form must be retained indefinitely in the licensing file.
- C. Licensers must not issue full licenses nor authorize unsupervised access to children by licensees, employees, or volunteers until criminal history checks, including fingerprinting when required, have been completed and documented.

### 5560 Evaluation and Disposition

Local or regional CA staff must take action based on information resulting from the background inquiries and must not license or authorize those persons to provide care who have been convicted of or have charges pending for offenses listed in Section 5590 or who appear in child abuse records as perpetrators of founded child abuse or neglect.

### 5561 No Record

If the background inquiry reveals no criminal convictions, no WSP or CAMIS child abuse record information, or pending charges, no further action is necessary to complete the background check. However, results of the background check are not the only indicators of character and suitability.

**5562 Child Abuse Record**

Use CA Policy 01-07 or WAC 388-148 to evaluate child abuse records.

**5563 Enforcement Record****A. Conviction for Disqualifying Offense**

1. If the background inquiry reveals that the person has been convicted of any offenses listed in paragraph 2 or 3 below or section 5590, or their equivalents in other jurisdictions, or is listed in the WSP child abuse record information, the social worker must deny the license or authorization to provide care.
2. In any case, if the inquiry reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, the convicted felon is permanently prohibited from being a licensed out-of-home care provider or certified as an adoptive parent. The licenser or adoption worker must not license or certify the applicant. CA must not waive this provision because federal law requires the permanent prohibition. CA staff must never accept a certificate of rehabilitation that would excuse these crimes.

**42 USC 671(a)**

- a. The crimes in Washington state law that constitute a felony for purposes of this paragraph include:
  - i. Abandonment of a Dependent Person – 1<sup>st</sup> degree
  - ii. Abandonment of a Dependent Person – 2<sup>nd</sup> degree
  - iii. Aggravated Murder – 1<sup>st</sup> degree
  - iv. Arson - 1<sup>st</sup> degree
  - v. Arson - 2<sup>nd</sup> degree
  - vi. Child Molestation – 1<sup>st</sup> degree
  - vii. Child Molestation – 2<sup>nd</sup> degree
  - viii. 5000-39
  - ix. Child Molestation – 3<sup>rd</sup> degree
  - x. Child Selling – Child Buying
  - xi. Criminal Mistreatment – 1<sup>st</sup> degree
  - xii. Criminal Mistreatment – 2<sup>nd</sup> degree
  - xiii. Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct
  - xiv. Family Abandonment
  - xv. Felony Communication with a Minor for Immoral Purposes
  - xvi. Felony Indecent Exposure
  - xvii. Homicide by Abuse
  - xviii. Incest – 1<sup>st</sup> degree
  - xix. Incest – 2<sup>nd</sup> degree
  - xx. Indecent Liberties
  - xxi. Kidnapping - 1<sup>st</sup> degree
  - xxii. Kidnapping - 2<sup>nd</sup> degree
  - xxiii. Luring
  - xxiv. Manslaughter – 1<sup>st</sup> degree
  - xxv. Manslaughter – 2<sup>nd</sup> degree



- xxvi. Murder – 1<sup>st</sup> degree
- xxvii. Murder – 2<sup>nd</sup> degree
- xxviii. Patronizing a Juvenile Prostitute
- xxix. Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct
- xxx. Rape – 1<sup>st</sup> degree
- xxxi. Rape – 1<sup>st</sup> degree – domestic violence
- xxxii. Rape – 2<sup>nd</sup> degree
- xxxiii. Rape – 2<sup>nd</sup> degree – domestic violence
- xxxiv. Rape – 3<sup>rd</sup> degree
- xxxv. Rape – 3<sup>rd</sup> degree – domestic violence
- xxxvi. Rape of a Child – 1<sup>st</sup> degree
- xxxvii. Rape of a Child – 2<sup>nd</sup> degree
- xxxviii. Rape of a Child – 3<sup>rd</sup> degree
- xxxix. Sexual Exploitation of a Minor
- xl. Sexual Misconduct with a Minor – 1<sup>st</sup> degree
- xli. Sexual Violation of Human Remains
- xl. Unlawful Imprisonment

3. In any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense within the past five years from date of application for foster care license or adoption certification, the licenser or adoption worker must not license or certify the convicted felon. CA must not waive this provision because federal law requires the exclusion. CA staff must not accept a certificate of rehabilitation that would excuse the five year period.

**42 USC 671(a)**

- a. Conviction of one the felonies listed below, as identified in Washington state law, within the past five years disqualifies a person from being approved for placement of a child:

- i. Any felony violation of Imitation Controlled Substances Act
- ii. Any felony violation of the Legend Drug Act
- iii. Any felony violation of the Precursor Drug Act
- iv. Any felony violation of Uniform Controlled Substances Act
- v. Assault – 1<sup>st</sup> degree
- vi. Assault – 1<sup>st</sup> degree – domestic violence
- vii. Assault – 2<sup>nd</sup> degree
- viii. Assault – 2<sup>nd</sup> degree – domestic violence
- ix. Assault – 3<sup>rd</sup> degree
- x. Assault – 3<sup>rd</sup> degree – domestic violence
- xi. Assault of a Child – 1<sup>st</sup> degree
- xii. Assault of a Child - 1<sup>st</sup> degree – domestic violence
- xiii. Assault of a Child – 2<sup>nd</sup> degree
- xiv. Assault of a Child – 2<sup>nd</sup> degree – domestic violence
- xv. Assault of a Child – 3<sup>rd</sup> degree
- xvi. Assault of a Child – 3<sup>rd</sup> degree – domestic violence
- xvii. Assault or Reckless Endangerment in Violation of Protection Order
- xviii. Assault or Reckless Endangerment in Violation of No Contact Order
- xix. Controlled Substances Homicide

- xx. Felony violation of a protection order
  - xxi. Felony violation of a no contact order
  - xxii. Unlawful Use of a Building for Drug Purposes
4. CA staff need to consult their assigned Assistant Attorney General or contracted County Prosecutor if the staff need clarification about the meaning of any of the listed crimes or their application to licensing or certification actions.

**B. Conviction for Non-Disqualifying Offense**

1. If the background inquiry reveals that the person has been convicted of an offense not listed in section 5590, the social worker must consider such information in determining the character, suitability, and competence of the prospective caretaker as required by chapter 74.15 RCW and WAC 388-73-030. The fact of such conviction must not in itself be the basis for denial of licensure or authorization to provide care.
2. Under exceptional circumstances, except as described in section 5563(2) and (3), an individual convicted of a crime may not automatically be prohibited from contact with children solely because of the conviction. The social worker may consider the following factors when contemplating whether to proceed with licensure:
  - a. The type of crime for which the individual was convicted;
  - b. The number of crimes for which the individual was convicted;
  - c. The nature of the offense(s);
  - d. The age of the individual at the time of conviction;
  - e. The length of time that has elapsed since the last conviction;
  - f. The relationship of the crime and the capacity to care for children;
  - g. Evidence of rehabilitation;
  - h. Opinions of community members concerning the individual in question.

**C. Pending Charges-**If the background inquiry reveals that charges are pending against the person for any of the offenses listed in section 5590 of this chapter, or their equivalents in other jurisdictions, the social worker must withhold a care provider's license or authorization to provide care until dismissal or acquittal occurs.

1. Pending charges for other offenses may be grounds for withholding licensure or authorization to provide care.
2. Pending charges may be reason for suspending, summarily or otherwise, the license of an already licensed agency.

3. If the background inquiry reveals that pending charges are more than one year old, the designated CA staff person must make further inquiry with the charging law enforcement agency to determine the disposition or status of the charge.
  4. Unless there is a disposition within the 90-day application period, the licenser or social worker must deny or close the application if the applicant has pending charges related to an offense which would adversely affect licensure. The individual may reapply following a disposition of the charge. CA staff may not take pending charges which are more than one year old as grounds for a licensing action unless the case is still active because of a continuance.
- D. For purposes of background checks, CA staff may use convictions for crimes relating to drugs as a tool for investigation and may use these convictions for any decision regarding the person's suitability for a position in which the person may have unsupervised access to children or vulnerable adults. For the definition of "Crimes Related to Drugs," see Appendix A.

**RCW 43.43.835****5564 Use of Non-Conviction Information**

Aside from a charge pending less than one year, CA staff must not use non-conviction information as the sole basis for a disciplinary action on a license. Non-conviction information may, however, create a basis for further investigation, especially background queries to other law enforcement agencies.

**5565 Disposition**

- A. CA will deny, suspend, or revoke the license of any applicant, chief executive, owner, operator, and/or administrator of any agency if the person has been found to fall under the provisions of WAC 388-148-0095 and 388-148-0100.
- B. As required by WAC 388-148-035, CA staff must disqualify from providing care any person (including licensees, staff, or other persons on the premises) having a history of offenses which indicates that the person is not of good character and/or may not have the emotional stability and personality to meet the needs of persons in care.

**5566 Right of Appeal**

See WAC 388-06-0240 for criteria for a disqualified person's right to request an administrative hearing and steps to be followed.

**5570 Information Sharing**

Sections 5570 B and 5570 E4 are rescinded and replaced by Policy 01-07 and WAC 388-06. (April 2002)

CA staff may share information from the background inquiry only with the person whose background has been checked. Staff may share the information with others if the subject person has signed a specific authorization to do so. Such a release of

information authorization is located on the back of the DSHS 14-239(X). All information received from the FBI or WSP is authorized for use by DSHS only for the purpose for which it was obtained, and, as such, it cannot be disclosed or disseminated to a third party.

- A. Designated CA staff must notify the applicant of the WSP's response within 10 days after receipt of the information. The staff must provide a copy of the response to the applicant, if requested.

**RCW 43.43.834**

- B. Staff must follow WAC 388-06-0250 with regard to the sharing of background check information with employers or approved care providers. (April 2002)
- C. CA staff may provide information within DSHS on a need-to-know basis. Dissemination of conviction records and pending charges to individuals with a need to know is unrestricted within the department.
- D. Department staff must not give a returned background inquiry form or "rap sheet" or a copy of such to any person who is not an employee of the department.
- E. A person with convictions may have unsupervised access to children or individuals with a development disability in two situations. Refer to WAC 388-06-0190 for details of the two situations and the criteria for considering approval of a person with a conviction history. (April 2002)
- F. If a person is disqualified, the appointing authority or designee must give written notice of disqualification to the person. The appointing authority/designee must inform the individual before notifying the child care agency.
  - 1. The disqualified person's notice must state what the person is disqualified from doing, the reasons for the disqualification, and the applicable law under which the person is disqualified.
  - 2. The notice must inform the disqualified person of their right to a fair hearing under RCW 43.20A.205.
  - 3. A licensee or contractor may not allow a person disqualified under this policy to associate with the licensee or contractor's agency. Disqualification of a person may not be contested by a licensee or contractor.

## **5580 State Office Responsibilities**

- A. Designated Background Central Clearance Unit (BCCU) staff within the Human Resources Division conducts criminal history inquiries and reviews the WSP abuse record information system. They will check for criminal history against any name used by the subject, the subject's birth date, and the subject's Social Security Number, if provided.
- B. BCCU staff return findings to authorized personnel from the office which forwarded the background inquiry.

- C. BCCU staff maintains a log of persons for whom criminal history inquiries have been done.

## **5590 Offenses**

Sections 5590 A and B have been rescinded and replaced by CA Policy 01-07 and WAC 388-06.

CA social workers and licensors must refer to the lists of crimes in Children's Administration Policy 01-07 when approving a person for unsupervised access to children or individuals with a developmental disability in addition to those listed above in section 5563(A)(2) and (3). (April 2002)

### **A. Juvenile Rehabilitation Administration Facilities**

1. Engrossed Second Substitute Senate Bill 6445, Chapter 269, Laws of 1998, passed in the 1998 legislative session, amended chapter 72.05 RCW to prohibit regular access of employees or volunteers convicted of certain crimes to juveniles in facilities under Juvenile Rehabilitation Administration (JRA) jurisdiction. This provision is effective September 1, 1998.
  - a. See WAC 275-37-010 for the definition of "regular access."
  - b. This list of crimes differs somewhat from the list of crimes contained in WAC 388-06-170, 388-06-0180 and CA Policy 01-07.
  - c. JRA has adopted, effective September 1, WAC 275-37-010 and 275-37-030 to implement the statutory requirement.
2. For facilities licensed by CA to serve JRA clients, in addition to the crimes listed in WAC 388-06, the DLR OFCL Regional Licenser must exclude as licensees or employees or volunteers of licensees, having regular access to youths in care, persons convicted of any of the following crimes:
  - a. Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a "violent offense" under RCW 9.94A.030Any federal or out-of-state conviction for an offense that, under the laws of the state of Washington would be a felony classified as a violent offense
  - b. Any felony defined under law as Class A Felony or an attempt to commit a Class A Felony, criminal solicitation of or criminal conspiracy to commit a Class A Felony
  - c. Assault of a child in the second degree
  - d. 5000-46
  - e. Drive-by shooting
  - f. Holding a corrections officer hostage
  - g. Indecent Liberties if committed by forcible compulsion
  - h. Sexually violating human remains
  - i. Vehicular Assault
  - j. Vehicular Homicide when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug

defined by RCW 46.61.502 (legally drunk), or by the operation of any vehicle in a reckless manner

3. For any facility licensed to serve JRA youth, any licensee, employee, or volunteer of the facility who is convicted of any crime identified in CA Policy 01-07, must report this information to the individual's supervisor within seven days. The licensed agency must then notify the DLR OFCL Regional Licensor immediately upon receiving this information. The facility management must allow no contact by individuals convicted of these crimes with children in care.

## **5600 TRANSPORTATION FOR CHILDREN**

Any CA staff, volunteers, interns, or foster parents transporting children, whether in a privately owned or state vehicle, shall ensure that the children use age-appropriate child safety seats or restraints. Such driver must also possess a current, valid driver's license and liability insurance.

## **5700 BLOOD BORNE DISEASES**

### **5710 Blood Borne Pathogens Protection Plan**

#### **5711 Purpose and Scope**

- A. Employers must assess the risk to employees for a reasonably-anticipated potential for occupational exposure to blood and other potentially infectious materials during the course of performing their assigned duties. Although the risk of occupational exposure to blood borne pathogens (BBP) has been determined to be quite low for Children's Administration personnel, CA has stipulated this *Blood Borne Pathogens Protection Plan* to further minimize the risk of exposure, to provide guidance addressing unexpected exposure to blood and/or bodily fluids, and to meet requirements set forth by the Occupational Safety and Health Administration (OSHA), and the Washington Industrial Safety and Health Act (WISHA).
- B. The plan applies to and is accessible to all employees and will be reviewed and updated annually, or as required by statute.

#### **5712 Definitions**

Definition of terms applicable to the Plan is found in Appendix A.

#### **5713 Methods of Implementation**

- A. **General**-All employees will use *Universal Precautions* (see Appendix A) whenever there is reasonably anticipated contact with blood or other potentially infectious fluids.
- B. **Safe First-Aid Practices**
  1. The Regional Administrator or appropriate Director shall ensure that each office provides and maintains first aid kits and equipment which minimally

include several sets of gloves, CPR protective shields, germicidal hand wipes, and plastic disposal bags.

2. First line supervisors in each office shall inform their employees of the location of, and ensure that they have immediate access to, first aid equipment and will encourage them to use it while rendering first aid.
3. Staff designated by the Regional Administrator or the applicable Director shall determine the location of first aid kits, to include placement in state cars and in office reception areas, bathrooms, and kitchens. Designated staff shall develop local procedures which include local office information and methods for documenting notification to staff.
4. The office procedures shall designate and identify staff responsible for stocking of the kit and include posting names of responsible staff.
5. Whenever blood or other potentially infectious materials may be present, the employee rendering first-aid shall use appropriate personal protective equipment, such as gloves. The employee shall immediately wash his/her hands after gloves are removed.
6. The person giving CPR shall use a one-way valve micro-shield and then appropriately discard it.
7. If there is more than one victim, the person giving assistance shall use new protective equipment, such as gloves and CPR micro-shields, for each victim.

#### **C. Disposal of Contaminated Items**

1. Staff shall handle all material exposed to and contaminated with blood or other potentially infectious materials with gloves. Staff shall place and transport contaminated material in a plastic bag that prevents soak-through and/or leakage to the exterior.
2. The employee shall label the bag as to contents with label prominently displayed and dispose of contents in trash bins unless contents meet the definition of regulated waste (See Appendix A). In that case, the employee shall dispose of contents in accordance with state and local regulations; e.g., by taking the bag to a local hospital or medical clinic for disposal, by depositing with the fire department's emergency response team on the scene, or by calling the local solid waste utility for further information.

#### **D. Laundry**

1. To prevent the spread of contamination, staff shall remove all clothing that has been contaminated with gloves and place it in a plastic bag that prevents soak-through and/or leakage. The bag shall be labeled as to contents with label prominently displayed.
2. The employee shall change out of contaminated clothing. CA shall provide temporary clothing, such as surgical scrubs, for the person to wear.

3. If the employee is in the field and not intending to return to the work site, he/she should remove contaminated clothing, place it in a plastic bag immediately on arriving home, and return it to the work site as soon as possible.
4. Employees shall not take contaminated personal clothing home for home-laundrying.
5. The CA office, in accordance with local or regional procedures, shall arrange for professional cleaning, laundering, repair and/or disposal and replacement of the garment at no cost to the employee. Payment for the cleaning will be handled according to regional policy. Local procedures shall state to whom the contaminated laundry shall be given.

#### **E. Cleaning**

1. All CA property that may have been contaminated with blood or other potentially infectious materials shall be cleaned immediately or as soon as possible after the incident, in accordance with local procedures.
2. Employees shall wear gloves during all cleaning procedures.
3. Employees shall dispose of gloves used for cleaning procedures into a plastic bag. The employees shall wash their hands immediately after gloves are removed.
4. Each CA office shall provide and make available appropriate cleaning supplies, such as bleach, Lysol, AseptiCare, or MegaSol.
5. Employees shall use a household bleach solution in a mixture of one part bleach to 10 parts water made fresh for immediate use or an appropriate germicide, which may include Lysol Spray, AseptiCare, or MegaSol.
6. Staff shall handle all broken glass or other "sharps" with broom, dust pan, tongs, or forceps in order to reduce the risk of exposure. If items are contaminated, staff shall pour bleach solution or germicide over the area, prior to removal.
7. Staff shall dispose of broken glass and/or "sharps" into containers that are leak-, spill- and cut-proof.

#### **F. Training**

1. The Regional Administrator or Director, as applicable, shall arrange for all employees to be trained in order to become knowledgeable on the plan.
2. Training shall be provided during work hours and free of charge to all employees.
3. All new employees shall be trained during employee orientation.
4. The training shall address, at a minimum, the following subjects:



- a. Blood borne pathogens.
  - b. Universal precautions.
  - c. Safe first-aid practices.
  - d. Blood borne Pathogens Protection Plan.
5. All employees who have received training shall sign a S. F. 141, *Developmental Training Report*.
- G. **Post-Exposure Prophylaxis, Evaluation, and Follow-up**-Each Regional Administrator, Regional Manager, or Director, as appropriate, shall arrange for provision of post-exposure follow-up and prophylaxis to all employees who have an exposure to blood and/or other potentially infectious body fluids while on the job.
1. **Employee Self-Care**-Every employee shall be informed during training of the following necessary self-care process:
    - a. Exposure to the eyes - Flush eyes with water and/or appropriate solution.
    - b. Exposure to the nose - Blow nose and wipe inside of nostril.
    - c. Exposure to the mouth - Spit and rinse mouth.
    - d. Exposure to skin - If a hand washing facility is not available, wipe immediately with germicidal towelette and then, as soon as possible, wash in hand washing facility.
  2. **Incident Reporting**-After every incident involving blood or other potentially infectious material, the employee shall report the incident to a supervisor. If exposure has occurred, the supervisor shall assist the employee in filling out a *Report of Employee Personal Injury*, DSHS 3-133.
  3. **Medical Follow-up**
    - a. The supervisor shall ask the employee to go to a licensed health care professional immediately or at least within 24 hours of the incident for a post-exposure evaluation and follow-up.
    - b. The employee will take the following to the health provider:
      - i. A copy of the *Report of Employee Personal Injury*, DSHS 3-133.
      - ii. A post-exposure evaluation form for the health care professional's written opinion.
      - iii. A copy of the portion of WAC 296-62-08001(6) noting requirements for evaluation & follow-up.

- c. The supervisor shall complete the *Report of Employee Personal Injury*, DSHS 3-133, and route copies following the instructions on the form, including forwarding a copy of the Department of Labor and Industries (L&I) report to the Office of Safety & Risk Management, once the completed copy is received from the health care provider.
- d. Post-exposure evaluation and follow-up may consist of HIV counseling and testing, Hepatitis B immunoglobulin, and the offer of the full series of the Hepatitis B vaccine.
  - i. CA shall make available all post-exposure evaluation and follow-up, including hepatitis B vaccination, at no cost to the employee.
  - ii. Employees who decline to receive recommended HBV vaccination must sign a declination form.
- e. The designee of the Regional Administrator or Director, as applicable, shall request that the source individual have his/her blood tested as soon as possible, with the test results disclosed to the exposed employee. The source individual is not required by law to have the tests or to disclose test results.
- f. The designee shall remind the exposed employee that the test results are not to be disclosed to anyone, except for the health care provider providing the employee's medical evaluation. When the source individual is already known to be infected with hepatitis B virus or human immunodeficiency virus (HIV), blood testing for these viruses need not be requested.

#### 4. **Record-Keeping**

- a. The health care provider will report back to CA that appropriate post-exposure evaluation, prophylaxis, and follow-up has been offered.
- b. All medical records of this exposure follow-up will be kept confidential by CA for the duration of the person's employment plus thirty years. Records will be maintained by the DSHS Office of Risk Management, Safety and Health Section, and will not be included in the employee's personnel file.

#### 5. **Payment**

- a. The regional office, for field staff, and state office, for headquarters staff, shall make payment for supplies, laundering, shots, and other expenses related to first aid practices, BBP exposures, and exposure preparations.
- b. The Regional Administrator or Director, Division of Management Services, as appropriate, shall determine the method of payment and include funding in the appropriate budget.
- c. The Regional Administrator, the Regional Manager, and the applicable Director shall ensure the development of local procedures, including

identification of person to whom payment questions and requests shall be directed.

## **5720 Blood Borne Infections**

### **5721 Purpose and Scope**

This section provides guidelines for the implementation of procedures pertaining to infections carried in the blood, such as Sexually Transmitted Diseases (STDs), specifically Human Immunodeficiency Virus (HIV) and Hepatitis B Virus (HBV).

### **5722 Definitions**

For definitions relating to this section, see Appendix A.

### **5723 Implementation Practices/Procedures**

#### **A. Non-Discrimination**

1. CA shall not discriminate against persons with or perceived to have HIV infection. This policy includes discrimination against employees, clients, licensees, contractors, or volunteers. Procedures for persons who believe they have been subjected to discrimination because of HIV status are found in *DSHS Administrative Policy 6.09*.
2. Licensees are not required by law to share their HIV status with licensers. If this information is shared by the licensee or prospective licensee, licensers may request additional health information, as is the case with disclosure of any serious illness of a licensee. Decisions regarding continued licensing of an HIV infected person are made in the same manner as any serious illness.

#### **B. Regional HIV/BBP Coordinator**

1. Each Regional Administrator must designate an HIV/BBP Coordinator to oversee issues related to HIV, HBV, and other BBPs.
2. The social worker refers all HIV/HBV affected cases and issues related to BBP to the regional HIV/BBP Coordinator for consultation and staffing as appropriate.
3. The Coordinator:
  - a. Provides information and consultation on CA policy.
  - b. Provides consultation for case management.
  - c. Serves as liaison with the health care community and AIDS service organizations.
  - d. Convenes the HIV/BBP Advisory Team.

**C. Regional HIV/BBP Advisory Team**

1. Each Regional Coordinator must develop an HIV/BBP Advisory Team to advise on issues related to HIV, HBV, and other BBP.
2. The Regional HBV/BBP Advisory Team:
  - a. Assists, as necessary, with development of regional guidelines on issues related to HIV/BBP.
  - b. Provides case consultation, as needed.

**D. Universal Precautions-**All staff, out-of-home care providers, volunteers, licensees, and respite care providers must use universal precautions when dealing with children in care and treat all blood and body fluids containing blood as if known to be infectious. See section 5710, Blood Borne Pathogens Protection Plan.**E. HIV Testing**

1. HIV testing of a child is a medical procedure and, therefore, must be done only in consultation with the Regional HIV/BBP Coordinator **and** on the recommendation of the local health department or a licensed health care provider knowledgeable about HIV infection.

HIV testing of a child **under the age of 14** generally requires the written consent of the parent or legal guardian after the parent or guardian has received pre-test counseling.

- a. When HIV testing of a child under the age of 14 is being requested as a result of potential perinatal exposure, the social worker or HIV/BBP Coordinator shall inform the child's mother of the request and ask the mother to provide the results of her past HIV tests or to be tested in order to possibly eliminate the need for testing of the child. This testing is voluntary and will be confidential, consistent with this section.
  - b. When parental rights have been terminated, the social worker of a child under the age of 14 may authorize HIV testing.
  - c. The social worker shall obtain a court order for testing if the parent or legal guardian is unavailable or unwilling to provide consent for testing of a child under the age of 14 and if a medical reason for testing exists.
  - d. If a child under 14 years of age tests positive for any STD, including HIV, the HIV/BBP Coordinator shall ensure that the medical professional or the local health department notifies the parent or legal guardian of the test results.
2. HIV/STD testing of a youth age 14 or over requires the written consent of the youth or a court order. The youth may request testing on his/her own authority.

- a. The written consent or court order shall authorize test results for HIV or HBV to be released to the social worker and out-of-home care provider.
- b. When obtaining a court order or a consent for HIV testing, the social worker shall, if needed, also gain authority to share the results with others who have a compelling "need to know" and are not otherwise authorized to know under chapter 70.24 RCW. All such individuals shall be identified in the consent or court order. The consent or court order shall authorize treatment, as necessary.

## F. Confidentiality/Disclosure

1. Infection with HIV and other sexually transmitted diseases is a personal and private matter. Staff, care providers, and volunteers shall treat information related to these issues in a confidential and respectful manner and shall not disclose this information except in accordance with state law and as provided in this section and paragraphs G and H, below
2. **Disclosure Practices and Criteria**
  - a. CA staff shall not share the HIV/STD status of a parent with anyone, without that parent's written consent, other than CA staff with a need to know. See paragraph H, below, for exception criteria for prospective adoptive parents.
  - b. In order to facilitate appropriate health care for a child, the social worker may share HIV/STD status of a parent with the health care provider to help determine the appropriateness of testing the child, provided the parent's identity is not revealed.
  - c. CA staff shall not share information related to the HIV/STD status of a youth **14 years or older** with anyone, including parents, without the youth's written consent or a court order. However, the social worker shall inform the child that no placement may be made without full disclosure to the prospective residential care provider.
  - d. For children **under 14 years of age** in DCFS custody, DCFS shall share information related to HIV and other STDs with people making case planning decisions only as authorized by law.
    - i. RCW 70.24.105 authorizes disclosure to the DCFS worker, the child's private child placing agency worker, the child's *Guardian Ad Litem* in a dependency action, and the person, including the adoptive parent, providing residential care for the child.
    - ii. To document disclosure of HIV/AIDS information, the social worker will assist the residential care provider to complete and sign the *Disclosure of Confidential HIV/AIDS Information*, DSHS 09-837. The social worker will then place this form only in the child's confidential HIV/AIDS file.

- iii. Disclosures to any individual other than those identified in subparagraph "i" requires parental or legal guardian consent or a court order. The HIV/BBP Coordinator shall make decisions on a case by case basis regarding who has a "need to know" and who should, therefore, be listed in the court order or consent.
- e. The social worker shall ensure that the child's current health care provider is aware of the child's exposure to HIV/HBV. If the health care provider knows the identity of the parent, neither DCFS nor the residential care provider has the authority to disclose the parent's HIV/HBV status without the parent's written consent or a court order.
- f. Social workers shall not disclose information related to a parent or child's HIV or other STD status to other CA employees, except their immediate supervisor, manager, and HIV/BBP Coordinator.
- g. When a written disclosure is made by a CA employee, as authorized by law, to other than another CA employee, the social worker or HIV/BBP Coordinator shall accompany it with the following statement and acknowledge it in writing on the form, *Disclosure of Confidential HIV Information*, DSHS 09-837:

*This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains or as otherwise permitted by state law. A general authorization for the release of medical or other information is **not** sufficient for this purpose.*

- h. The social worker shall follow up any oral disclosure by a CA employee to other than another CA employee by sending, within 10 days, the *Disclosure of Confidential HIV Information*, DSHS 09-837, to the person(s) receiving the information.
- i. Information on HIV or STD status that is recorded or stored electronically in CAMIS shall be secured. This includes the Medicaid Management Information System (MMIS) data stored in CAMIS and recorded data in documentation files such as the Health Card. The social worker shall keep case recordings which disclose information related to the child's or parent's HIV or other STD status or exposure in a "privileged/confidential information" envelope used to safeguard sensitive case information. Access to this envelope is strictly limited to those authorized by law, with consent or as noted on a court order. Access to other parts of the child's record does not assume the right to access HIV/STD information.
- j. Social workers shall not disclose HIV/STD information in written reports to the court without consultation with the assigned legal counsel.
- k. When HIV/STD information is discussed in court, the social worker, through legal counsel, shall make special arrangements with the court to protect the confidentiality of the parties.

**G. Placement**

1. DCFS staff shall inform the residential care provider of the child's HIV/HBV status, if known. The social worker shall not inform the residential care provider of the HIV/HBV status of a child age 14 or older without the child's permission or a court order. However, the social worker shall inform the child that no placement will be made without disclosure of such status to the prospective residential care provider.
2. HIV exposed/infected children may be placed with other children unless otherwise advised by the health care provider. However, DCFS staff shall not place known HBV infected children or perinatally exposed infants in households with other unvaccinated persons.
3. The social worker shall strongly consider a child's and/or parent's wish not to disclose a child's positive HIV/HBV status to relatives when investigating a potential relative placement. However, if the child is actually placed, the social worker must disclose the child's HIV/HBV status. This revelation could negatively impact family relationships.
4. The social worker shall arrange for provision of medical attention for the HIV/STD infected/exposed child by a physician knowledgeable in this specialty area.
5. When placing a child known to be HIV/HBV exposed or infected, the social worker, in addition to providing the residential care provider with information regarding the child's current health status and names of all health care providers, shall inform the residential care provider of all resources involved and provide instruction in any special care needs of the child prior to placement.

If exposure of infection is discovered after placement, the social worker shall immediately provide the above information to the residential care provider and ensure the provision of instruction in any special care needs.

6. When HBV infection is discovered in an individual living or working in a foster/receiving/group home, the social worker shall immediately notify the Regional HIV/BBP Coordinator and the local health department. Public health department recommendations for testing and immunization of household contacts shall be followed. DCFS staff shall place no additional unimmunized children in the home while the possibility of exposure exists.

**H. Adoption**

1. The adoption worker or HIV/BBP Coordinator shall provide prospective adoptive parents with all available information on the STD/HIV/HBV status of children under 14 years of age.
2. For children age 14 or above, the social worker shall not disclose status without the child's permission but shall not place the child without such disclosure.

3. Staff shall share the STD/HIV/HBV status, if known, of the parents, if the possibility of infection of the child by that parent exists. In such cases, the identity of the parents may not be disclosed.
4. CA staff shall identify children with HIV infection in adoption exchange books and/or media as having "serious medical problems." HIV exposure of uninfected children does not need to be noted in exchange books. Only when a serious inquiry is received and the social worker has determined that the family is a potential candidate should the child's specific medical history be discussed. The social worker shall not disclose the child's name until the family is selected as the adoptive family.
5. The social worker shall provide prospective adoptive parent(s) with the *Child's Medical and Family Background Report*, DSHS 13-041(X). The social worker shall include on the document all available medical information related to the child and biological parent, including HIV/STD information if possibility of exposure exists. The identity of the parent is not disclosed on this form.
6. When HIV testing is recommended, the social worker shall consult with the HIV/BBP Coordinator and arrange for completion of the test prior to finalization of the adoption.
7. The social worker shall inform the prospective adoptive parent that HIV I infection may qualify a child for adoption support.

#### I. Training

1. CA shall arrange for all employees to receive HIV/BBP training which covers prevention, transmission, infection control, treatment, testing, confidentiality CA-related policy and procedure, as it relates to adults and children.
2. All individuals and agencies licensed by CA shall receive HIV/BBP training which covers prevention, transmission, infection control, treatment, testing, confidentiality and CA-related policy and procedure, as it relates to adults and children.

### 5800 ELECTRONIC MONITORING

#### 5810 Purpose And Scope

- A. This policy establishes guidelines for CA staff to ensure that the right of foster children to privacy in their homes is respected and that the use of electronic monitoring devices is limited to those situations where it is the least intrusive means of meeting the particular needs of the child whose behavior is being monitored.
- B. This policy applies to all facilities licensed by the Division of Licensed Resources' (DLR) Office of Foster Care Licensing (OFCL).
- C. This policy covers the use of video cameras and auditory listening devices.
- D. This policy does not include restrictions for door monitors, window alarms, or other motion detectors.



## 5820 Policy

- A. Washington statutory (RCW 9.73.030) and constitutional law (U.S. Constitution Amendment 4; WA constitution, article 1, § 7) guarantee the right to privacy.
- B. The statute (RCW 9.73.030) governing the use of electronic eavesdropping devices prohibits any person from intercepting or recording any private conversation by electronic or other device, unless all persons engaged in the conversation consent to the interception or recording. Violation of this statute may result in criminal and civil sanctions.
  - 1. The Washington Constitution protects a person from government intrusion into the individual's private affairs or home without authority of law.
  - 2. The constitutional right to privacy may be invaded only if:
    - a. There is a necessary governmental purpose that justifies the intrusion; and
    - b. There is no less restrictive means available to accomplish that purpose.
- C. CA prohibits the use of video and auditory monitoring of a foster child in the child's foster/group homes unless (1) the Division of Licensed Resources (DLR) Director grants approval for the use of an electronic monitoring device in the specific foster home, and (2) the court approves implementation of the monitoring as part of the child's case plan.

## 5830 Definition

- A. *"Electronic monitoring" means video monitoring or recording and auditory listening or recording used to either watch or listen to children as a way to monitor their behavior.* "Electronic monitoring" does not include the use of listening devices to monitor:
  - 1. Infants and toddlers;
  - 2. Medically fragile or sick children;
  - 3. Video recording equipment to document actions of a child as directed in writing by the child's physician;
  - 4. Video recording for special events such as birthday parties or vacations; or
  - 5. The use of door or window alarms or motion detectors.

## 5840 Procedures

- A. In any case in which video or audio monitoring of a foster child is proposed, an exception to the Department's prohibition against electronic monitoring may be requested by the child's social worker.

- B. The social worker must assess the need for electronic monitoring for a specific child in a specific home by using the following steps:
1. If the child does not have a therapist the social worker will:
    - a. Consult with supervisor to determine if there is sufficient evidence to justify obtaining the services of a therapist.
    - b. The supervisor may convene a staffing meeting of key personnel to discuss the proposal and need for electronic monitoring in the foster home. Specifically the staffing:
      - i. Evaluates the consequences of acquiring the services of a therapist; and
      - ii. Determines if the child's circumstances require the need for electronic monitoring.
    - c. If the supervisor and/or the staffing determine a therapist is justified, a therapist is obtained to assess the child.
    - d. If it is determined the child's circumstances do not require the need for a therapist no further action is required.
  2. The social worker will contact the child's therapist and convene a staffing of key personnel, including the therapist, to discuss the proposal and need for electronic monitoring in the foster home;
    - a. The therapist will determine the best method to meet the needs of the child and if there is a need for electronic monitoring. The therapist will provide a written recommendation for the child.
    - b. If the therapist determines electronic monitoring is unnecessary, no further action will be required.
    - c. The social worker sends a notice to the *guardian ad litem*, appropriate service providers, and the child's parents when electronic monitoring is recommended.
- C. Following receipt of the therapist's written recommendation of electronic monitoring of the child, the social worker, the recommending therapist, and the foster parents/group home staff must meet to consider and to document:
1. The reason(s) and need for the electronic monitoring of the child in the foster home;
  2. Whether less restrictive means of meeting the needs of the child are available;
  3. The least intrusive method and means of using electronic monitoring equipment to monitor the child, addressing:
    - a. A description of the equipment proposed to be used;

- b. The location in the home where the equipment will be placed;
    - c. Who will monitor the child and how will the monitoring be accomplished.
    - d. The impact of the electronic monitoring on any other children in the foster home.
  4. If the final recommendation is for approval of electronic monitoring, the social worker must forward written documentation to the licensor of the foster/group home designated for the child. The documents will explain the decision-making factors described in paragraph 3, above.
    - a. The licensor must reply in writing to the child's social worker designating whether the home is appropriate for the plan established in the proposed policy waiver.
    - b. The licensor will clarify any concerns the licensor has about implementing the proposal in the designated foster/group home.
  5. The request for approval of an exception to this policy will be forwarded to the Division Director for final approval. The approval for the use of electronic monitoring equipment applies to a specific child in a specific foster home or facility.
- D. If the DLR Director approves electronic monitoring, the case plan for the child must include:
  1. The reasons for the electronic monitoring;
  2. The therapist's goals;
  3. The timeframe for review or removal of the electronic monitoring equipment; and
  4. A description of the type of equipment to be used, and the manner in which it will be used.
- E. A court must make final approval of the use of electronic monitoring in a child's case plan.
- F. Following DLR Director approval and following court approval of the case plan, the social worker and the out-of-home care provider may implement the electronic monitoring of the child as set forth in the case plan.
- G. If a child moves to another foster/group home, the approval ends and the social worker must request another approval at the next home.

